United States Department of Labor
Employees' Compensation Appeals Board

R.P., Appellant	)	
and	)	**Docket No. 08-1064**
	)	**Issued: November 26, 2008**
U.S. POSTAL SERVICE, SAPPINGTON POST OFFICE, St. Louis, MO, Employer	)	

Appearances:
Michael Wheeler, for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On February 28, 2008 appellant filed a timely appeal from the November 29, 2007 merit decision of the Office of Workers' Compensation Programs, which denied his claim for compensation. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of the case.

ISSUE

The issue is whether appellant sustained an emotional or physical injury in the performance of duty.

FACTUAL HISTORY

On November 21, 2005 appellant, then a 49-year-old letter carrier, filed a claim alleging that an incident on November 4, 2005 caused anxiety, depression and an aggravation of his hypertension:

> "I had my headphones on for about 30 minutes while I cased my mail on route 26055. My case was to be moved because I was accused of causing a hostile

> environment. I was notified of this by my Shop Steward Ted Spiro. At about 8:15 am, management also told other employees who then started singing 'Na Na Na Na Hey Hey Goodbye!' This along with a torn out ad left on my case prompted me to fill out a 3971, a sick leave slip. The ad was from a catalog and had been placed on my case; a copy is enclosed in complaint."

Appellant submitted a copy of an ad for The Looney Bin, which stated: "We're a bit looney here," "Odd things tend to occur here" and "Abnormality is the normality at this location." He stated that management wanted documentation for his illness. Appellant stated that he filled out a sick leave slip but left the return date open. He charged that a carrier supervisor, Doug Hedley, filled in the date with November 4, 2005. Appellant stated that, although management advised that this was not a work-related injury or covered sick leave, it was his understanding that, if he, as a Ten Point veteran, wrote "VA" under the remarks on the leave slip, the absence then becomes an excused absence. He likened this sudden and traumatic incident to being placed on "leave without pay" status for 32 hours the prior month. "This is shear (sic) harassment, management requires you to provide documentation, it takes you several days, I stayed in contact with them and they make you fight to get paid." Appellant stated that he wanted to claim this as a traumatic injury, though he added his belief that the Postal Service had rules that promoted a hostile work environment.

Supervisors informed the U.S. Postal Inspection Service that fellow carriers did not like appellant. According to one supervisor, four people were told of the relocation of appellant's distribution case because their cases had to be relocated as well. The inspection service stated: "The occurrence of singing could not be verified." The inspection service further stated that postal procedure required the completion of a sick leave form prior to submission and that appellant left the ending date blank so he would not have to report his status to timekeeping on a daily basis. The inspection service explained that an employee's request for leave was subject to the approval of a supervisor, and approval was based on the needs of the employing establishment and the availability of help. The inspection service rebutted appellant's view that writing "VA" in the remarks section of a leave request automatically made the absence an excused absence.

In a decision dated January 17, 2006, the Office denied appellant's claim for benefits. It found that he failed to identify at least one compensable factor of employment.

Appellant requested reconsideration and submitted statements about his grievances against management. He stated that he had about 13 complaints before the Equal Employment Opportunity (EEO) Commission, but most were on appeal.

On April 10, 2006 the Office reviewed the merits of appellant's case and found no evidence to substantiate his allegations of disparate treatment or a hostile work environment. It modified its prior decision to find that the incidents appellant's cited were not within the performance of duty.

Appellant requested reconsideration and indicated that he was claiming an occupational disease, that stress over a long period of time had a detrimental effect on his heart condition. He submitted articles or studies to support that chronic stress can have such an affect. Appellant

observed that letter carriers work under time constraints and that management continually pressures, intimidates, harasses, contorts the contract and shows favoritism to their relatives, wives and girlfriends. He attributed the stress to harassment from supervisors, who in 1997 followed him around continuously for weeks. Appellant alleged unequal enforcement of work rules. He stated that pain from his accepted lower extremity injuries caused stress.

To support his request for reconsideration, appellant submitted a March 13, 2007 note from a nurse practitioner: "[Appellant] suffered a myocardial infarction which was identified by cardiac stress testing in October 2003. Emotional stress caused or aggravated by employment was a contributing factor to the myocardial infarction."

In a decision dated November 29, 2007, the Office reviewed the merits of appellant's claim and denied modification of its prior decision. It found that the material submitted was insufficient to support appellant's allegations that management created a hostile workplace. The Office found no incident that occurred in the performance of duty.

LEGAL PRECEDENT

The Federal Employees' Compensation Act provides compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.[1] Workers' compensation does not cover each and every injury or illness that is somehow related to employment.[2] An employee's emotional reaction to an administrative or personnel matter is generally not covered. Nonetheless, the Board has held that error or abuse by the employing establishment in an administrative or personnel matter, or evidence that the employing establishment acted unreasonably in an administrative or personnel matter, may afford coverage.[3] As a rule, however, allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim.[4] Mere perceptions and feelings of harassment or discrimination will not support an award of compensation. The claimant must substantiate such allegations with probative and reliable evidence.[5]

The Board has underscored that, in claims for a mental disability attributed to work-related stress, the claimant must submit factual evidence in support of his allegations of stress from "harassment" or a difficult working relationship. The claimant for compensation must

[1] 5 U.S.C. § 8102(a).

[2] *Lillian Cutler*, 28 ECAB 125 (1976).

[3] *Margreate Lublin*, 44 ECAB 945 (1993). *See generally Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

[4] *See Arthur F. Hougens*, 42 ECAB 455 (1991); *Ruthie M. Evans*, 41 ECAB 416 (1990) (in each case the Board looked beyond the claimant's allegations of unfair treatment to determine if the evidence corroborated such allegations).

[5] *Joel Parker, Sr.*, 43 ECAB 220, 225 (1991); *Donna Faye Cardwell*, 41 ECAB 730 (1990) (for harassment to give rise to a compensable disability, there must be some evidence that harassment or discrimination did in fact occur); *Pamela R. Rice*, 38 ECAB 838 (1987) (claimant failed to establish that the incidents or actions which she characterized as harassment actually occurred).

specifically delineate those factors or incidents to which the emotional condition is attributed and submit supporting factual evidence verifying that the implicated work situations or incidents occurred as alleged. Vague or general allegations of perceived "harassment," abuse or difficulty arising in the employment is insufficient to give rise to compensability under the Act. Based on the evidence submitted by the claimant and the employing establishment, the Office is then required to make factual findings, which are reviewable by the Board. The primary reason for requiring factual evidence from the claimant in support of his or her allegations of stress in the workplace is to establish a basis in fact for the contentions made, as opposed to mere perceptions of the claimant, which in turn may be fully examined and evaluated by the Office and the Board.[6]

The claimant has the burden of establishing the essential elements of his claim by the weight of the reliable, probative and substantial evidence.[7] His burden of proof is not discharged by the fact that he has identified employment factors that may give rise to a compensable disability. The claimant must also submit a well-reasoned medical opinion establishing that he has an emotional or psychological disorder and that such disorder is causally related to the identified compensable employment factors.[8]

Causal relationship is a medical issue,[9] and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on whether there is a causal relationship between the claimant's diagnosed condition and the established incident or factor of employment. The opinion of the physician must be based on a complete factual and medical background of the claimant,[10] must be one of reasonable medical certainty,[11] and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the established incident or factor of employment.[12]

Newspaper clippings, medical texts and excerpts from publications are of no evidentiary value in establishing the element of causal relationship, as they are of general application and are not determinative of whether the specific condition claimed was causally related to the particular

[6] *Paul Trotman-Hall*, 45 ECAB 229 (1993) (concurring opinion of Michael E. Groom, Alternate Member).

[7] *Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968) and cases cited therein.

[8] *William P. George*, 43 ECAB 1159, 1168 (1992).

[9] *Mary J. Briggs*, 37 ECAB 578 (1986).

[10] *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

[11] *See Morris Scanlon*, 11 ECAB 384, 385 (1960).

[12] *See William E. Enright*, 31 ECAB 426, 430 (1980).

employment injury involved.[13] A nurse is not a "physician" within the meaning of the Act and is therefore not competent to give a medical opinion on the issue.[14]

ANALYSIS

The Office denied appellant's claim because he failed to establish a compensable factor of employment. To the extent that he attributes his emotional condition to actions taken by management, the Board agrees that he is making a claim that is generally not covered by workers' compensation. His emotional reaction to the decision to move his case on November 4, 2005 or to the requirement for medical documentation of illness or to any decision on leave requests is something that lies, basically speaking, outside the scope of the Act.

There is an exception where the evidence establishes error or abuse by management in an administrative or personnel matter. Management has rebutted appellant's allegations, and appellant has submitted no proof that management acted erroneously or abusively in any of the matters alleged. To establish that harassment did in fact take place, he must submit proof to substantiate his perceptions and allegations. Appellant has pursued many such allegations through the EEO Commission, but he appears, so far, to have been unsuccessful in making the case against management. In the absence of any positive, independent evidence showing error or abuse by management, the Board finds that appellant has not established a compensable factor of employment in any of the administrative or personnel matters alleged.

Appellant's claim is somewhat broader than this. He also alleged that on or about November 4, 2005 someone placed an ad on his case. To substantiate this allegation, appellant submitted a copy of an ad for The Looney Bin. There appears to be no evidence to the contrary. The employing establishment has offered no denial or rebuttal. The Board therefore finds that appellant has established this incident as factual. The Board also finds that this incident is a compensable factor of employment.

Appellant further alleged that, on November 4, 2005, when his case was being relocated, coworkers taunted him by singing "Na Na Hey Hey Kiss Him Goodbye." He did not identify the singers or possible witnesses by name, but his allegation was specific as to time, place and subject matter, making it a proper subject of investigation and response by the employing establishment. The only response appearing in the record is a single sentence from the U.S. Postal Inspection Service: "The occurrence of singing could not be verified." On the record as it currently exists, appellant has not proved that this alleged incident occurred. The employing establishment is not required to disprove appellant's allegation. The Postal Inspection Service conducted an investigation and noted that it could not confirm that the singing incident occurred. While the report might have been more detailed this Board does not conclude that the investigation was inadequate as to the alleged singing incident.

[13] *Gaetan F. Valenza*, 35 ECAB 763 (1984); *Kenneth S. Vansick*, 31 ECAB 1132 (1980).

[14] *Vicky L. Hannis*, 48 ECAB 538 (1997); *see* 5 U.S.C. § 8101(2) (the term "physician" includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by state law).

There is a deficiency in appellant's claim that makes further development by the Office unnecessary. Appellant has failed to submit a single medical opinion to support the critical element of causal relationship. He submitted an opinion from a nurse practitioner, who reported that emotional stress caused or aggravated by employment was a contributing factor in the myocardial infarction identified in October 2003. A nurse practitioner, however, is not a physician under the Act and is not competent to address this matter. To discharge his burden of proof, appellant must submit a well-reasoned medical opinion from a qualified physician explaining how his exposure to The Looney Bin ad caused or aggravated a diagnosed emotional or physical injury. Medical articles or studies on the effects of chronic stress are of general application and do not address appellant's specific situation. Because appellant has submitted no competent medical opinion to support one of the essential elements of his claim, the Board finds that he has not made even a *prima facie* case for benefits, much less discharged his burden of proof by the weight of the reliable, probative and substantial evidence. For this reason, the Board will affirm the Office's denial of compensation.[15]

CONCLUSION

The Board finds that appellant has not met his burden to establish that he sustained an emotional or physical injury in the performance of duty.

[15] *See Herman E. Harris* (Docket No. 91-1754, issued April 29, 1992) (finding that the claimant failed to establish a *prima facie* claim for compensation where he submitted no medical opinion relating his occupational disease or condition to factors of his federal employment).

ORDER

IT IS HEREBY ORDERED THAT the November 29, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 26, 2008
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board